

Application No. 10/539,570  
Reply to Office Action of April 22, 2008 and  
the Advisory Action dated October 9, 2008

REMARKS/ARGUMENTS

Claims 11-20 and 22-23 are active.

Claim 11 has been amended to incorporate the limitations of Claim 21.

As no new issues arise by the incorporation of a previously considered dependent claim into its independent claim, it is requested at least for the purposes of an Appeal that the amendment be entered.

It is also requested to expedite this application that the Office reconsider allowance of the claims in light of this amendment. Applicants do not repeat the substance of the discussion from the last filed paper and rather incorporate that here again.

In the Advisory Action, the Examiner has withdrawn the rejection pertaining to the term “infestation” which Applicants appreciate. However, the Action maintained that the claims would have been obvious in view of the previously cited references.

At page 2 of the Action, the Examiner outlines her position that the phrase “for combating acarids” is an intended use but that the actual step in the method of placing the cereals in contact with a powder is shown by the cited references. While Applicants disagree, it is requested that this position be reconsidered because claim 11 as amended here not only requires that the sodium bicarbonate be applied to cereal (the basis of the rejection and what is discussed in the cited art) but also that the cereals to which the sodium bicarbonate is applied are infested with acarids. Such is not described or suggested by the art cited in the rejection. Thus, the cereals treated are not necessarily those that may also be infested with insects.

Further in the Advisory Action, the Examiner still deems that the art provides sufficient teaching to yield a reasonable expectation that the use of sodium bicarbonate would

work for other pests not limited to the insects described by Knight. Applicants respectfully disagree.

It is appreciated that “[c]ommon sense teaches...that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle.” KSR v. Teleflex, 127 S.Ct. 1727 (2007). However, in the same regard it should be noted that “The Supreme Court’s analysis in KSR thus relies on several assumptions about the prior art landscape. First, KSR assumes a starting reference point or points in the art, prior to the time of invention, from which a skilled artisan might identify a problem and pursue potential solutions. Second, KSR presupposes that the record up to the time of invention would give some reasons, available within the knowledge of one of skill in the art, to make particular modifications to achieve the claimed compound. Third, the Supreme Court’s analysis in KSR presumes that the record before the time of invention would supply some reasons for narrowing the prior art universe to a “finite number of identified, predictable solutions.” **To the extent an art is unpredictable, as the chemical arts often are, KSR’s focus on these “identified, predictable solutions” may present a difficult hurdle because potential solutions are less likely to be genuinely predictable.”** Eisai Co. Ltd. v. Dr. Reddy’s Laboratories Ltd., 87 USPQ2d 1452 (Fed. Cir. 2008)

The art cited does not teach treating acarid infested cereals, acarids are not insects and as such there is no evidence that one would have reasonably expected that sodium bicarbonate would have worked on acarid infested cereals regardless of whether one considered sodium bicarbonate effective and safe for insects or fungi. It is again emphasized that Knight’s discussion actually teaches away from the claimed method. This is so because, one reading Knight’s disclosure would understand that acarids, who do not have the body

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segmentation that Knight describes, would not necessarily be susceptible to the same piercing effects of the particles.

A Notice of Allowance without further delay is kindly requested.

Respectfully submitted,

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